IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.32 OF 2005

Deepa Shailesh Mehta .. Appellant

Vs.

Shailesh Shantilal Mehta .. Respondent

Ms.B.P. Jakhadi for the appellant

Mr.Kirit Mody i/b M/s.Panchamatia & Co. for the respondent

CORAM: J.N.PATEL &
A.A.SAYED, JJ

JUDGMENT RESERVED ON: 2ND AUGUST, 2007

JUDGMENT DELIVERED ON: 26TH NOVEMBER, 2007

ORAL JUDGMENT : (PER J.N.PATEL, J):

1. Heard the learned counsel for the parties.

2. This appeal has been preferred by the original petitioner wife Ms.Deepa Shailesh Mehta aggrieved by the decision of the Family Court which dismissed her petition being petition no.C-127 of 2000 filed under

section 18 of the Hindu Adoptions and Maintenance Act, 1956 by judgment and order dated 31st March, 2003.

3. The parties to the appeal got married on 20th April, 1999 at Bandra as per Hindu Vedic rites. Prior to the marriage, both were divorcees i.e. the appellant wife and the respondent husband. It appears that the marriage was not successful in the sense that the parties could not happily live together. No issue was born out of the said wedlock.

4. It was the case of the appellant wife that she got married to the respondent through the intervention of Smt.Vasuben Jayantilal and they were given to understand that the respondent husband is carrying on his business of 'Caterers and Decorators' and earns an average income of Rs.1,00,000/- per month and that the appellant wife would be taken care of. This is how the marriage was arranged and performed on 20th April, 1999. According to the appellant wife, the expenses of both the parties for the said marriage were incurred by the wife's side and immediately after the marriage with the respondent, she went to reside at the matrimonial house at Jamnagar. Soon after the marriage, respondent husband, his mother and family members started demanding monies on one count or

the other and in order to preserve the matrimonial relations, her brother Jatin Bhemani paid a sum of Rs.15,000/- but this did not gratify the demands of the respondent husband and they started treating her with cruelty and she was physically and mentally tortured. The respondent husband on having realised that the appellant wife is not able to get any additional sums of money from her parents and relatives, he started neglecting her and told her to tell her brother to maintain her and that she should search a job to maintain herself.

5. Another contention which was raised in the petition was that she was sexually harassed by the respondent husband who subjugated her to inhuman treatment during co-habitation and on her refusal, she was tied up with a rope and beaten up and tortured. Therefore, life of the appellant wife became full of misery.

6. It is the case of the appellant wife that when the situation used to become unbearable, she was often compelled to call her brother Mr.Jatin Bhemani. On the second occasion, somewhere in the month of August, 1999, her brother paid an additional amount of Rs.20,000/- to the respondent husband with a request that he should not torture and ill treat

the petitioner.

7. The miseries of the appellant wife did not end and the respondent husband and his mother insisted for gold set of 20 tolas from the appellant wife. It is at this stage that she was mercilessly beaten up and driven away from her matrimonial house and threatened her with dire consequences if she came back. According to the appellant wife, she was driven out of the matrimonial house with her wearing apparels at the middle of the night. Therefore, she was required to take shelter in Vikas Ashram for two days i.e. on 17th September, 1999 to 19th September, 1999. She also lodged a police complaint on 19th September, 1999. It is only after the news was published in daily newspaper 'NOBAT' on 20th September, 1999 about the appellant wife, the respondent husband brought her back to her matrimonial home and persuaded the appellant wife to bring Rs.15,000/- from her brother in order to facilitate them to reside separately and assured that he will keep the appellant wife happy. On this assurance, a sum of Rs.15,000/- was again given to the respondent husband and a separate arrangement for her residence was made in a rented premises at Bhanushaliwadi, Shriraj, Jamnagar which was taken on rent of Rs.1500/- per month.

8. It is the case of the appellant wife that the respondent husband was a casual visitor to the place and used to come only to satisfy his sexual desires and continued to treat her with cruelty by torturing her physically and mentally and failed to provide her with any maintenance. She was not even given medical treatment as and when she had fallen sick. It is in these facts and circumstances that the appellant wife was compelled to call her brother Mr.Jatin Bhemani. It is on 26th January, 2000 that her brother along with her family members and friends came to Jamnagar for reconciliation but the respondent maliciously lodged false police complaint and managed to get her mother and brother arrested. This all compelled the appellant wife to leave her matrimonial home in January 2000 with her mother and brother, Mr.Jatin Bhemani and, therefore, she is forced to reside at Mumbai with her mother. It is her case that as the petitioner was not able to maintain herself and as her brother has a very meager income and has to maintain his mother and her another younger brother who is handicapped and as the petitioner was treated with cruelty it caused an apprehension in her mind that it will be injurious and harmful for her to live with the respondent husband, she was left with no chance but to approach the Family Court for claiming her stridhan as well as her maintenance in the sum of Rs.10,000/- per month. It is her case that all

her ornaments are still lying with the respondent, of which, list is annexed to the petition. Therefore, the petitioner claims that she is entitled for maintenance and sought maintenance of Rs.10,000/- per month and return of Stridhan along with cost of the petition.

9. In reply to the petition for maintenance, the respondent husband, Mr.Shailesh Shantilal Mehta pleaded in his defence that the appellant wife has suppressed material facts from the court though the facts relating to marriage are not disputed and that both were divorcees. It was his case that the appellant wife is responsible for what has hapenned and on earlier occasion also extracted a lump sum amount towards permanent alimony in a sum of Rs1,25,000/- from her earlier spouse, Shri Kaivanna Chandulal Shah and that after marrying the respondent husband within a few months, she has again resorted to creating a situation to coerce the respondent husband to pay her maintenance and that she has deserted the respondent out of her own free will and against his wishes. The respondent husband also took a stand that he has filed a suit being suit No.55 of 2000 under section 9 for Restitution of conjugal rights under Hindu Marriage Act, 1955 against the appellant wife which is pending in the court at Jamnagar and he has denied all the allegations made by the appellant wife.

10. On the aspect of income, the respondent husband has specifically denied that he is doing business of 'Caterers and Decorators' and earning Rs.1,00,000/- per month. According to him, he is working for 'Chhaganlal & Co.' who are the wholesalers and distributors of Jamnagar and that he has only studied upto 10th Standard and doing job of a Peon in the said firm and the nature of job assigned to him is to go to places and give and collect payments for his master and that he earns a monthly salary of Rs.3600/- per month, in support of which, he has submitted a salary certificate.

11. The respondent husband has tried to explain that the appellant wife's claim that he is in the business of 'Caterers and Decorators' of which a visiting card is placed on record, it is his case that this is an old visiting card wherein the respondent and his brother Shri Nupen Mehta used to let small items like decorated Dandiyas, Stove, fan, lights, table cloth, etc. used for small parties and functions and that the visiting card itself clarifies the fact that there is no sign or mention about catering business as stated by the appellant wife which is being conducted by them and that after getting separated from his family, he has left that business and taken up the said job.

12. It is the case of the respondent husband that the petitioners claim is all concocted. He or his mother has never treated her with cruelty nor demanded any dowry and the claim of the appellant wife that her brother has time and again paid them a sum of Rs.15,000/- is false and that in so far as visit of her brother is concerned, he had come on a personal visit along with his friends who all stayed in a hotel and had come to the petitioner's house only for breakfast . The respondent husband has denied all allegations of cruelty and on the other hand, took up a stand that the marriage of the parties did not consummate at all and, therefore, the question of sexual harassment does not arise.

13. In respect of the case of the appellant wife that she was treated with cruelty and driven out of the house is itself strictly denied and on the other hand, it is submitted that the appellant wife left on her own on the pretext that she wanted to go to her parents place. On the other hand, her mother and brother along with some antisocial elements came to the respondent's house and tried to assault the family members of the respondent husband, of which immediately a police complaint was lodged and the police arrested the family members of the wife and the assailants who according to the respondent husband were criminals, some of whom

are still absconding.

14. It is the case of the respondent husband that the petitioner herself took away all her belongings and therefore, there is no question of retaining any stridhan on his part and therefore, the petition deserves to be dismissed as she is not entitled for maintenance or any other relief claimed in the petition.

15. On completion of the pleadings, the family court proceeded to decide the petition. The learned Judge of the Family Court found that the appellant wife has failed to prove that she has been treated with cruelty and that she is entitled for maintenance and dismissed her petition and that is how the appeal has been preferred before us.

16. The learned counsel appearing for the appellant wife submitted that the Family Court overlooked the fact that the appellant wife was treated with cruelty in order to extract dowry which was paid by the brother of the appellant wife in order to save the marriage but as the demand for 20 tolas of gold from the appellant wife could not be fulfilled she was continued to be treated with cruelty which virtually made an

apprehension in her mind that it will be injurious and harmful for her to live with the respondent husband and as she was driven away from her matrimonial home she was left with no choice but to move the court for maintenance.

17. It is submitted that as a counter to her claim for maintenance, the respondent husband has filed a suit for restitution of conjugal rights. It is submitted that the appellant wife is justified in residing separately and claiming maintenance considering the cruel treatment meted to her at her in-laws place at the hands of her mother-in-law and the sexual harassment and the cruelty she suffered, like on various occasions she was tied with the rope and was badly beaten up and tortured. It is submitted that the appellant wife sufficiently established her case that she was driven out of her matrimonial home in the middle of the night and was required to take shelter in Vikas Ashram in Jamnagar for two days and that it is only when her story was published in local newspaper 'NOBAT' that the respondent husband took her away from the Ashram back to matrimonial home where she was again coerced to get a sum of Rs.15,000/- and therefore, in these facts and circumstances, particularly the manner in which the appellant wife was treated at her matrimonial home, the Family court

ought to have granted maintenance rather than dismissing her petition on flimsy ground, particularly relating to the fact that the appellant wife's case for payment of dowry does not find any support in the evidence on record as she has failed to prove that her brother paid a sum of Rs.15,000/- and Rs.20,000/- to fulfill the demand of the respondent husband and her family members and secondly, the learned Judge of the Family Court was carried away with the fact that the police case came to be registered against the mother and brother of the petitioner at Jamnagar along with their associates for having committed criminal trespass and assaulting the family members of the respondent husband.

18. On the other hand, the learned counsel for the respondent husband has submitted that the learned Judge of the Family Court was justified in dismissing the petition as the petitioner failed to prove that she was treated with cruelty and deserted. On the other hand, the claim of the appellant wife of being treated with cruelty in order to coerce dowry was not at all established though she examined herself and her brother in support of her case and further the fact that the wife's mother and brother along with the associates came and assaulted the husband and her relatives itself goes to falsify the case of the appellant wife and therefore, this court

should dismiss the appeal.

19. The only point for our determination is whether the appellant wife is entitled to reside separately and claim maintenance. In order to claim maintenance under section 18 of the Hindu Adoptions and Maintenance Act, 1956 the wife should be able to establish from the conduct of the husband and his family members that the husband has treated the wife with such cruelty as to cause reasonable apprehension in her mind that it will be injurious and harmful for her to live with the husband and if she is able to prove that the conduct is such and is intended to convey an impression that the wife is not wanted and her presence is resented, that would amount to cruelty.

20. In support of her case, the wife has examined herself and her brother Mitesh whereas in reply, the respondent husband has examined himself and his brother Rupen. In so far as the factum of the parties getting re-married being divorcees through intervention of her relative is concerned, the same is not at all disputed. The only question is as to whether the wife was treated with cruelty in order to coerce or to fulfill the demand for dowry and whether it will be harmful and injurious for her to

live with her husband.

21. The wife in her evidence has given vivid details as to how the marriage came to be solemnised and thereafter, how she was treated at her in-laws place and that the demand for various sums of money was made which was paid by her brother. On first occasion sum of Rs.15,000/- was paid and on the second occasion, sum of Rs.20,000/- came to be paid. Thereafter, there were instances of getting gold from her parents. On one occasion, she was thrown out of the house in the middle of the night and she was required to stay at Vikas Ashram and then returned home. It is also not disputed that they were required to reside separately from her in-laws. According to the appellant wife, it was because of the cruel treatment meted out to her by her in-laws and on the other hand, a different story is given by her husband on this aspect. From the evidence led by the appellant wife, she has been able to establish that she was not happy at the house of the respondent husband and that they decided to reside separately. She did not get the necessary attention from her husband which was expected of and that on one occasion, she was driven out of her house and was required to stay at Vikas Ashram. It is in this background that she left Jamnagar and came back to her mother's place at

Mumbai. Her brother has deposed to the fact that the demand for sums of money for Rs.15,000/- and Rs.20,000/- was made from time to time and that the same was paid but it has been disbelieved by the family court because he was not able to prove how and when the monies were actually paid. In his evidence, he has stated that he himself went and paid money whereas in his cross-examination, he has admitted that on one occasion it was sent by Angadia.

22. On the point of income of the husband, except for the bare words of the appellant wife that the respondent husband is earning a sum of Rs.1,00,000/- per month out of the business of 'Caterers and Decorators', there is nothing on record to prove the exact income of the husband though the respondent husband has accepted that he is earning Rs.3,600/- per month by working as a Peon in a firm. The respondent husband has exploited the incident in connection with which her mother, brother and some associates of the family have been to his place. On the other hand, it is the case of the appellant that they had visited the place with an object to bring about a reconciliation which resulted in a quarrel and on the other hand, according to the respondent husband the visit was with an object to assault them.

23. On considering the evidence on record, we have no hesitation to hold at least the fact that the husband and his family have treated the appellant wife in such a manner that the behaviour towards her was sufficient to convey an impression that she is not wanted and her presence is resented and though this was the second marriage of the couple being divorcees, they could not pull on together. The allegations and counter allegations rather go to show particularly after the incident because of which the appellant wife was required to leave home and prior to that, the mother of the appellant wife and his associates having gone to the residence of the respondent husband, a quarrel took place and offence was registered against them which is still pending. It is surprising that even in this backdrop, the husband has proceeded to institute a suit for restitution of conjugal rights in the court at Jamnagar which rather goes to show contradiction in the case put up by the respondent husband in his defence to the petition for maintenance by the wife.

24. This according to us is sufficient to show that on one hand, the respondent husband and his family members did not want the appellant wife to reside with them as there is no reason why the appellant wife would leave the company of her husband having suffered a set back in her

first marriage unless she was treated with cruelty and it was the case of the respondent husband that the marriage was not at all consummated inspite of they having lived for sufficient long time and he still wants her back goes to show that the appellant wife is justified in living separately from her husband and claiming maintenance. The learned Judge of the Family Court did not take into account all these probabilities which rather weigh the case in favour of the appellant wife and analyse the evidence on record as if it was a criminal trial being conducted. Therefore, this court finds that the finding of the learned Family Court on the issue whether the petitioner proves that the respondent has treated her with cruelty cannot be sustained.

25. The next question which arise for our determination is what is the maintenance for which the appellant wife is entitled. Taking into consideration that the husband has himself admitted that he is earning a sum of Rs.3,600/-, we find that as he has got a brother who is well of and can take care of his mother and the husband having none to maintain, he can be directed to pay a sum of Rs.2,500/- per month towards maintenance to the wife considering the bare necessities of life which are required to be met which includes provision for food, clothing, residence, medical

attendance and treatment and sundry amount for her health and well-being.

26. Therefore, the impugned judgment and order is quashed and set aside. The respondent husband is directed to pay a sum of Rs.2,500/- per month from the date of filing petition in the family court and shall pay all arrears of maintenance till 30th November, 2007 on or before 31st March, 2008 and continue to pay maintenance from the month of December, 2007 on or before 10th of each month. The appeal is allowed in aforesaid terms with costs.

J. N. PATEL, J

A. A. SAYED, J